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8 *Counsel for Defendant Conagra Brands, Inc.*  
9 *formerly ConAgra Foods, Inc.*

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 **Case No. CV 11-05379-CJC (AGR<sub>x</sub>)**

14 **MDL No. 2291**

15 **CLASS ACTION**

16 **IN RE CONAGRA FOODS,**  
17 **INC.**

18 **RESPONSE TO RENEWED MOTION**  
19 **FOR FINAL APPROVAL OF THE**  
20 **SETTLEMENT AND AWARD OF**  
21 **ATTORNEYS' FEES, EXPENSES AND**  
22 **SERVICE AWARDS**

23 Defendant Conagra Brands, Inc. (formerly, ConAgra Foods, Inc., “Defendant,”  
24 or “Conagra”) files this response to Class Counsel’s Renewed Motion for Final  
25 Approval of the Settlement and Award of Attorneys’ Fees, Expenses and Service  
26 Awards (ECF 742). In response thereto, Conagra states as follows:

- 27 1. Conagra agrees with class counsel (ECF 742) and the declaration of Magistrate  
28 Judge Douglas F. McCormick (ECF 739) that there was no collusion between  
the parties regarding the proposed class settlement. Not only were material terms  
vigorously negotiated and presented to the parties via an arm’s length mediator’s  
proposal, but the proposed attorneys’ fee award was not suggested by Judge  
McCormick until after other material terms of the settlement were resolved in  
principle. ECF No. 739 ¶¶10-14. Accordingly, the close scrutiny of the record

1 required by the Ninth Circuit’s remand reveals absolutely no evidence of  
2 collusion between the parties.

3 2. Conagra joins class counsel in noting that the settlement required Conagra to  
4 fund an uncapped, claims made settlement which allowed essentially unlimited  
5 potential exposure depending on the number of claims made.<sup>1</sup> ECF 742, Exhibit  
6 A (July 19, 2021 Hrg. Tr. at 27:4-16 (describing the uncapped settlement with a  
7 robust notice program). At the time the settlement agreement terms were  
8 reached, Conagra did not know—and could not have known—the ultimate cost  
9 of the settlement.

10 3. Conagra further agrees with class counsel that the class settlement is particularly  
11 “fair” to consumers. Based on this Court’s prior comments and developments  
12 in product labeling class action jurisprudence since the proposed settlement was  
13 reached, Conagra strongly believes that—in the absence of an approved  
14 settlement—Conagra will be successful in securing decertification of the  
15 certified classes and/or prevailing at summary judgment. ECF 742, Exhibit E  
16 (Oct. 7, 2019 Hrg. Tr. at 16:25-17:7 (explaining that, had litigation continued,  
17 Conagra would have filed a motion to decertify the classes and motion for  
18 summary judgment). The proposed settlement thus represents a windfall for  
19 class members who would receive nothing if Conagra prevailed on  
20 decertification or the merits.

21 4. In the settlement agreement, Conagra agreed not to object to class counsel’s  
22 petition for fees and expenses seeking up to \$6,850,000 (ECF No. 739 ¶14).  
23 While Conagra has abided – and continues to abide – by this commitment,  
24 Conagra takes *no position* as to what amount (up to \$6,850,000) is appropriate  
25 and fair to the class. Whether the fee award sought is fair and reasonable, and  
26 whether courts should consider the proportionality of the fee as compared to the  
27

28 <sup>1</sup> In addition to funding additional buckets to fund claims made by consumers from  
certain states. ECF No. 739 ¶¶10-14.

1 benefit inuring to the class members, is a matter to be determined by this Court  
2 in accordance with Rule 23 and Ninth Circuit jurisprudence.  
3

4 Dated: September 29, 2021

Respectfully submitted,

5 /s/Angela M. Spivey

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13 *Brands, Inc., formerly ConAgra*  
14 *Foods, Inc.*

15  
16  
17 **CERTIFICATE OF SERVICE**

18 I, Angela Spivey, hereby certify that on September 29, 2021, I caused a true  
19 and correct copy of the foregoing RESPONSE TO RENEWED MOTION FOR  
20 FINAL APPROVAL OF THE SETTLEMENT AND AWARD OF ATTORNEYS'  
21 FEES, EXPENSES AND SERVICE AWARDS to be filed and served electronically  
22 via the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all  
23 parties by operation of the Court's electronic filing system or by mail to anyone  
24 unable to accept electronic filing as indicated on the Notice of Electronic Filing.  
25 Parties may access this filing through the Court's CM/ECF system.  
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27 /s/ Angela M. Spivey

28 Angela Spivey

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